

LAWRENCE J. TEKER
TEKER TORRES & TEKER, P.C.
Suite 2-A, 130 Aspinall Avenue
Hagåtña 96910-5018, Guam
Telephone: (671) 477-9891
Facsimile: (671) 472-2601

JOHN E.D. POWELL, WSBA #12941
CAIRNCROSS & HEMPELMANN, PS
524 Second Avenue, Suite 500
Seattle WA 98104
Telephone: (206) 587-0700
Facsimile: (206) 587-2308

Attorneys for Defendants *Marwan Shipping
& Trading, Five Seas Shipping Co., LLC,
and Al-Buhaira National Insurance Co.*

FILED

DISTRICT COURT OF GUAM

JAN 26 2007 ✓

MARY L.M. MORAN
CLERK OF COURT

UNITED STATES DISTRICT COURT

DISTRICT OF GUAM

UNITED STATES OF AMERICA,

Plaintiff,

v.

MARWAN SHIPPING & TRADING CO.,
FIVE SEAS SHIPPING CO., LLC AND S.J.
GARGRAVE SYNDICATE 2724, IN
PERSONAM, NAVIGATORS PROTECTION
& INDEMNITY, AND AL-BUHAIRA
NATIONAL INSURANCE COMPANY,

Defendants

AND CROSS-CLAIMS, COUNTERCLAIMS,
THIRD-PARTY COMPLAINT, AND CLAIM
IN INTERVENTION.

NO. CIV06-00011

**AL BUHAIRA NATIONAL INSURANCE
COMPANY'S ANSWER TO FIRST
AMENDED THIRD-PARTY COMPLAINT
OF S.J. GARGRAVE SYNDICATE 2724**

ANSWER

Al Buhaira National Insurance Company answers the First Amended Third-Party
Complaint of S. J. Gargrave Syndicate 2724 as follows:

AL BUHAIRA NATIONAL INSURANCE COMPANY'S
ANSWER TO FIRST AMENDED THIRD-PARTY
COMPLAINT OF S.J. GARGRAVE SYNDICATE 2724
CAUSE NO. CIV06-00011 - 1

Cairncross & Hempelmann, P.S.

Law Offices

524 Second Avenue, Suite 500

Seattle, Washington 98104-2323

Phone: 206-587-0700 • Fax: 206-587-2308

1 1. This answering defendant admits that this is a case of admiralty and maritime
2 jurisdiction and that this court has jurisdiction. Except as so admitted, the allegations of
3 paragraph 1 are denied.

4 2. Admitted.

5 3. This answering defendant admits that Gargrave's principal place of business is at
6 London, England and that Gargrave was, at all relevant times, the OPA insurer of the AJMAN 2
7 and the issuer and guarantor of the COFR provided to the USCG for the AJMAN 2. Except as so
8 admitted, this answering defendant is without information sufficient to form a belief as to the
9 truth of the remaining allegations contained in paragraph 3 and therefore denies same.
10

11 4. An answer to this paragraph is not required from this answering defendant.

12 5. Al Buhaira National Insurance Company is a corporation duly organized and
13 existing under the laws of the United Arab Emirates; is an insurer engaged in writing marine
14 insurance risks; and was the Hull and Machinery insurer of the AJMAN 2. The Hull and
15 Machinery insurance included limited P&I coverage as well. That policy speaks for itself.
16 Except as so admitted, the allegations of paragraph 14 are denied.

17 6. Admitted.

18 7. Paragraph 7 does not require an answer.

19 8. Denied.

20 9. Denied.

21 10. Paragraph 10 does not require an answer.

22 11. Denied.

23 12. Denied.

24 13. Paragraph 13 does not require an answer.

25 14. Denied.

1 15. Denied.

2 16-22. The allegations in paragraphs 16 through 22 are not directed at this answering
3 defendant and no answer is required.

4 23. Denied.

5 **AFFIRMATIVE DEFENSES TO THIRD-PARTY COMPLAINT**

6 1. Failure to state facts sufficient to constitute a cause of action against this answering
7 defendant.

8 2. This answering defendant is informed and believes that if S.J. Gargrave Syndicate 2724
9 sustained any injuries and damages, they proximately resulted from the conduct of others
10 and/or S. J. Gargrave Syndicate 2724.

11 3. The claims set forth in the third-party complaint are time barred.

12 4. S.J. Gargrave Syndicate 2724, by its conduct and/or the conduct of its agents, servants,
13 representatives, or employees, has waived and/or is estopped and barred from any rights of
14 recovery against this answering defendant.

15 5. S.J. Gargrave Syndicate 2724 is barred from any relief against this answering defendant
16 by reason of unclean hands.

17 6. S.J. Gargrave Syndicate 2724 and/or other parties not related to this defendant were
18 careless and negligent in and about the matters referred to in the third-party complaint, or
19 were otherwise responsible and legally liable for the allegations contained in said pleading,
20 which negligence, carelessness, and/or legal liability proximately contributed to and/or were
21 the sole proximate cause of the damages or injuries complained of, if any there be. Such
22 negligence, carelessness, and/or liability bar and/or proportionately reduce any recovery
23 against this answering defendant.
24
25
26

1 7. S.J. Gargrave Syndicate 2724 has failed to mitigate and minimize its damages, if any
2 there be, and said failure eliminates or reduces any claim for relief by S.J. Gargrave
3 Syndicate 2724 against this answering defendant.

4 8. S.J. Gargrave Syndicate 2724 is the pollution insurer for the AJMAN 2 as well as the
5 guarantor on the COFR which Gargrave issued. Gargrave has ignored its fiduciary
6 obligations to its insured and has placed its interests above those of its insured. Gargrave has
7 and is acting in bad faith and is in breach of its insurance contract with its insured. It is this
8 bad faith conduct and breach of contract which has led to the instant litigation.
9

10 9. In the event it is held liable, this answering defendant alleges that their liability is
11 secondary to other parties in this action and on that basis alleges that any award to which the
12 plaintiff is entitled must first be satisfied by said other parties.

13 10. This answering defendant hereby incorporates all defenses raised or that could be raised
14 by other parties to this action as if asserted here in full.

15 11. This answering defendant reserves the right to supplement and add to these affirmative
16 defenses as appropriate.
17

18 DATED this 24th day of January, 2007.

19 **CAIRNCROSS & HEMPELMANN, PS**

20 **TEKER TORRES & TEKER, P.C.**

21
22
23 By: 

24 **PHILLIP TORRES, ESQ.**, Attorneys for
25 Defendant Marwan Shipping & Trading Co.,
26 Sharjah, Five Seas Shipping Co., LLC,
Sharjah, and Al-Buhaira National Insurance
Co.

CERTIFICATE OF SERVICE

The undersigned certifies under the penalty of perjury according to the laws of the United States that on this date I caused to be served in the manner noted below a copy of this document entitled AL BUHAIRA NATIONAL INSURANCE COMPANY'S ANSWER TO FIRST AMENDED THIRD-PARTY COMPLAINT OF S.J. GARGRAVE SYNDICATE 272 on the following individuals:

Office of the United States Attorney
108 Hernan Cortez Avenue, Suite 500
Hagåtña, Guam 96910

David Ledger
Carlsmith Ball LLP
Bank of Hawaii Building
134 West Soledad Avenue, Suite 401
Hagåtña, Guam 96932-5027

Thomas Tarpley, Esq.
Law Offices of Thomas Tarpley
Bank of Hawaii Building
134 West Soledad Avenue, Suite 402
Hagåtña, Guam 96910

DATED this 26th day of January, 2007.


PHILLIP TORRES